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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,073	02/24/2004	Michael T. Carley	16497.1.1.2.1	9513

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EXAMINER	
TYSON, MELANIE RUANO	
ART UNIT	PAPER NUMBER
3773	

MAIL DATE	DELIVERY MODE
02/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/787,073	CARLEY ET AL.	
	Examiner	Art Unit	
	Melanie Tyson	3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 December 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to Applicant's amendment received on 05 December 2007. Corrections made to the drawings, specification, and claims have been accepted.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-11, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Spence et al. (6,488,692 B1). Spence discloses a device for engaging tissue (see entire document) comprising a generally movable annular-shaped body disposed about a central axis, a plurality of expandable (between an expandable and compressed state) looped elements forming an endless zigzag pattern, a deflectable primary tine extending from a first curved region offset from an axis of symmetry, a second primary tine extending from another first curved region offset from an axis of symmetry, and a set of deflectable secondary tines that are shorter than the primary tines and disposed on either side of the primary tines (for example, see Figures 9A-9D and 9F).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5, 12-14, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spence et al.

With respect to claim 5, Spence fails to disclose the material of the device comprises a superelastic alloy. It would have been obvious to one of ordinary skill in the art at the time the invention was made as a matter of design choice to construct the device of Spence of superelastic alloy, since superelastic alloys are well known in the art (for example, see Gifford's patent 5,904,697) and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

With respect to claims 12-14, 18, and 19, Spence fails to disclose the primary tines are connected to the curved regions by connector elements. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to connect the primary tines to the curved regions by connector elements, since connector elements are well known in the art (for example, see Gifford's patent 5,904,697 Figures 38A and 40A; straight portions) and it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. With further respect to claims 13 and 18 it would have been obvious to utilize curved connector elements, since applicant has not disclosed curved connector elements provide an advantage or solve a stated problem over straight connector elements.

With respect to claims 20-23, it would have been obvious as a matter of design choice to overlap the primary tines, since such a modification would have involved a mere change in size of the components. A change in size is generally recognized as being within the level of ordinary skill in the art.

Response to Arguments

3. Applicant's arguments filed 05 December 2007 have been fully considered but they are not persuasive. Applicant argues primarily that the prior art applied fails to disclose or suggest each and every element claimed. Examiner respectfully disagrees.

Applicant argues that neither Spence nor Gifford disclose or suggest the ring or body moves from a planar configuration to a transverse configuration and further that at least one first primary tine being deflectable out of the plane when the body is moved towards the transverse configuration. However, the applicant simply claims a body being "**movable** from a substantially planar configuration lying generally in the plane towards a transverse configuration extending out of the plane" and a at least one first

primary tine being "**deflectable** out of the plane when the body is disposed in the planar configuration." The terms "movable" and "deflectable" are considered to be functional language. The body and tines disclosed by Spence are malleable and deformable (for example, see column 8, lines 11-31), thus the body is movable as claimed and the at least first primary tine is deflectable as claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 9-5:30 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
February 14, 2008

/ (Jackie) Tan-Uyen T. Ho/
SPE of Art Unit 3773